

teen days to twenty-one days in light of the intervening Thanksgiving holiday on November 25, 2010. No change in the time for filing optional reply memoranda is requested.

4. The parties believe that the requested extension would only affect the other deadlines by extending the current scheduling order by approximately one month.

5. The parties agree that additional time is warranted due to the complexity of the constitutional questions at issue in the case and the extensive summary judgment record. As the Court noted in its Order on the School District's motions to dismiss, this case presents novel issues that have not been addressed in previous released time cases. *See* Dkt. 39 at 11. The extension of time will enable the parties to provide the Court with the best possible basis for deciding a case of unique national importance.

6. The parties have complied with all prior scheduling deadlines, including the discovery deadline. Despite the diligence of the parties, a number of outstanding discovery issues remain to be resolved before the record is complete. The requested extension will allow the parties sufficient time to resolve these issues before the dispositive motions deadline. In particular:

- a. On September 15, Plaintiffs took the depositions of non-party witnesses Steve Smith and Grayson Hartgrove. Mr. Hartgrove elected to read and sign his deposition, and has thirty days from receipt of the transcript to sign and return an errata sheet. The court reporter service informed the School District's counsel on October 11, 2010, that it has not yet released a final authorized transcript of these depositions.
- b. On September 16, Plaintiffs took the depositions of former School District employee Nan McDaniel and present School District employee Jeff Stevens. The deponents elected to read and sign their depositions, and have thirty days from receipt of their transcripts to sign and return an errata sheet. The court reporter informed the School

District's counsel on October 11, 2010, that it has not yet released a final authorized transcript of these depositions.

- c. On October 1, 2010, Plaintiffs took the deposition of non-party witness Troy Bridges. Mr. Bridges elected to read and sign his deposition, and has thirty days from receipt of the transcript to sign and return an errata sheet. The court reporter informed the School District's counsel on October 11, 2010, that it has not yet released a final authorized transcript of this deposition.
- d. On September 1, 2010, the School District served on Plaintiffs its second set of interrogatories, third set of requests for the production of documents, and first set of request for admissions. On October 6, 2010, the School District received Plaintiffs' responses to the School District's discovery requests. The School District has identified numerous deficiencies in Plaintiffs' responses. The School District's counsel conferred with Plaintiffs' counsel regarding the deficiencies verbally or in writing on October 8, 11, and 12. Counsel has resolved some, but not all, of the discovery issues. Plaintiffs' counsel has indicated Plaintiffs' are reviewing their responses, but have not had adequate time to further respond. The School District has until October 27, 2010, to file a motion to compel discovery regarding Plaintiffs' responses if Plaintiffs continue to refuse to fully respond to the School District's requests. *See* L.R. 37.01.
- e. On October 6, 2010, along with Plaintiffs' discovery responses, Plaintiffs served on the School District a Notice of Claim of Privilege under F.R.C.P. 26(b)(5)(B). The School District has challenged Plaintiffs' claim of privilege, but has agreed in the meantime to return the document to Plaintiffs and destroy all copies.

f. The parties anticipate that most or all of the outstanding discovery issues can be resolved by the parties without recourse to the Court should the extension be granted.

7. For these reasons, the parties respectfully request that the minimum amount of time generally allowed under the scheduling order be enlarged to allow the parties sufficient time to complete the record and to completely and adequately brief the complex and novel issues to be decided in this matter.

Respectfully submitted,

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